

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.55 OF 2005

Vasudeo Khacharmal Agarwal

...Petitioner.

V/s

Ansh Properties Pvt. Ltd.
and Ors.

...Respondents.

Mr. Madhav Jamdar for the petitioner.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 25TH FEBRUARY, 2005

P.C.:

1. Petitioner is the original accused No.1 in Criminal Case No. 98 of 2003 filed by respondent No.1 under section 138 of the Negotiable Instruments Act in the Court of Judicial Magistrate, First Class, Court No.1, Pune.

2. Petitioner is challenging issuance of process by the JMFC, Court No.1, Pune by order dated 7/11/2003 under section 420 of the Indian Penal Code and under section 138 of the Negotiable Instruments Act in Criminal Case No. 98 of 2003.

3. The learned Counsel appearing on behalf of the petitioner submitted that the cheques which were dishonoured were signed by accused No.2. and that the

said cheques were issued on account of M/s Vasudeo Khacharmal Agarwal & Co. of which the petitioner is the Proprietor. He submitted that the requirement of section 138 is that the cheque should be drawn by a person on the account maintained by him with the Banker for payment of any amount of money to another person from out of that account. It is submitted that though the cheques were issued on account of Proprietary Concern, they were signed by accused No.2 and, therefore, process could not have been issued against the petitioner. It is further submitted that since the petitioner was a Proprietor of M/s Vasudeo Khacharmal Agarwal & Co., the provisions of section 141 of the Negotiable Instruments Act regarding offences by Companies was not applicable to the present case. He has further submitted that from the deposition of Witness No.1 of the complainant, it can be seen that the accused No.1 was the Proprietor of the Firm and all the cheques were signed by accused No.2 as a Proprietor. It is, therefore, submitted that the petitioner could not be made liable under section 138 of the Negotiable Instruments Act. It is further submitted that there was no material to indicate that the petitioner had given power of attorney in favour of accused No.1. It is further submitted that even the provisions of section 420 of

the Indian Penal Code were not attracted and the dishonour of the cheques would never amount to cheating as per the provisions of the Indian Penal Code.

4. I am unable to accept the submissions made by the learned Counsel for the petitioner. On perusal of the complaint, it can be seen that there are specific averments made in the complaint that the accused No.1 is the Proprietor of M/s. Vasudev Khachermal & Co. in which name accused No.1 was running the business and accused No.2 was his son who had represented that he was the power of attorney of accused No.1. It is further averred in para 2 that the Proprietary Concern had a Bank Account in Mahesh Co-operative Bank Limited, Pune and the account was operated by accused No.1. as a Proprietor and accused No.2 as a power of attorney of accused No.1 and, therefore, accused No.2 used to sign the cheque as a power of attorney holder. There are further averments in the complaint that accused No.1 had negotiated and represented as a Proprietor on behalf of the Concern and both the accused had represented that they had an authority to act on behalf of the Concern. The accused No.2 had further represented that he had an authority to sign and negotiate on behalf of accused No.1 in the name of

the firm.

5. It can be seen from para 3 of the complaint that 20 cheques were issued by the accused towards the payment of liability of Rs 90 lacs which, on presentation, were dishonoured. There are also averments in the complaint which indicate that representations were made by both the accused who had caused wrongful loss to the complainant and wrongful gain to the accused. The learned Magistrate, after recording verification of the complainant, had issued the process and, thereafter, had recorded evidence of the complainant. Application was made for discharge which was rejected by the reasoned order. Criminal Revision Application was also preferred against the order of refusal to discharge the accused in the Sessions Court which was also rejected by the judgment and order dated 27/10/2004. The Sessions Court has observed in para 6 after perusing the record and proceedings of the Criminal Case that the cheques were drawn on account of Proprietary Firm of accused and the accused No.2 was a signatory of the cheques for the said Proprietary Firm of the accused and that the cheques were dishonoured as the account was closed. There are sufficient averments in the complaint which indicate that accused No.2 had acted as a power of

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attorney on behalf of accused No.1 and he had signed the cheques on behalf of accused No.1. There are also averments which indicate that representations were made both by accused Nos.1 and 2 which prima facie show that they have caused wrongful loss to the complainant and wrongful gain to the accused. The process, therefore, has been issued on both counts i.e. under section 138 of the Negotiable Instruments Act and under section 420 of the Indian Penal Code. Both the lower Courts have given cogent reasons while dismissing the application for discharge filed by the petitioner. All the questions raised by the petitioner in this petition will have to be decided only after the evidence is led by both the parties and, at this stage, it would not be appropriate to interfere with the order of framing of charge or the order of issuance of process by the learned Magistrate by exercising inherent powers of this Court under section 482 of the Criminal Procedure Code.

6. In the result, the following order is passed:-

O R D E R

. Writ Petition is dismissed. Trial Court is directed to expedite the hearing of the trial and to

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complete the hearing of the trial as expeditiously as possible and, in any case, within a period of six months.

. All concerned to act on the copy of this order duly authenticated by the Registry.

V.M. KANADE, J.